SUPREME COURT OF THE UNITED STATES.

No. ~~195.~~ 92 82

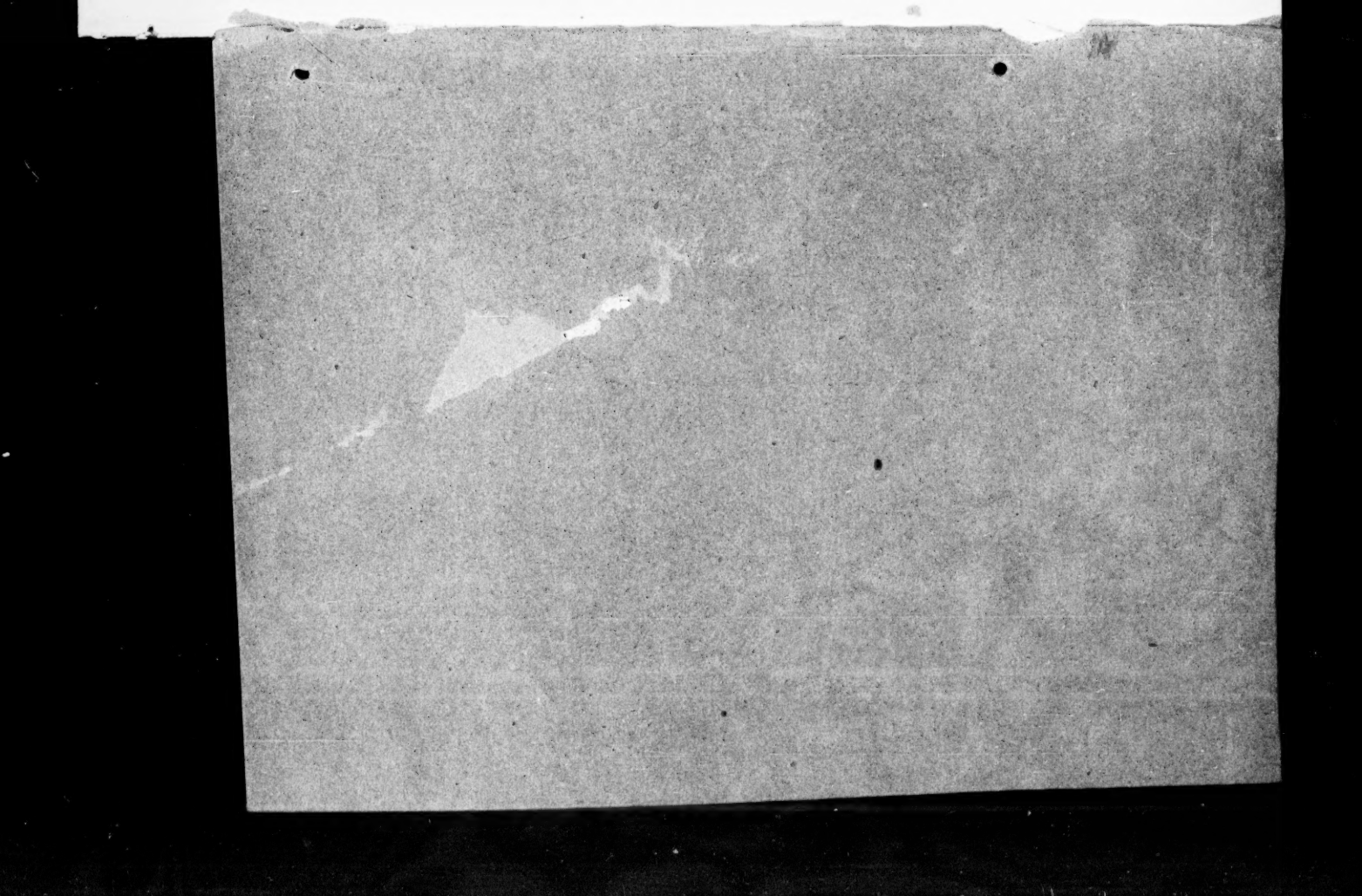
THE MARINE BANK OF CHICAGO, PLAINTIFF IN ERROR,

vs.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, USE OF THOMAS J. PORTER AND HENRY FORKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.



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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the city of Chicago, in said district, before the Hon. Thomas Drummond, district judge of said district, on Saturday, the fourteenth day of December, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the eighty-sixth year.

WM. H. BRADLEY, *Clerk.*

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, for the use of Thomas J. Porter and Henry Forker,
vs.
THE MARINE BANK OF CHICAGO.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 The President, Directors, and Company of the Western Reserve Bank, who sue for the use of Thomas J. Porter and Henry Forker, plaintiffs in this suit, put in their place Messrs. Waite and Towne, their attorneys, against the Marine Bank of Chicago, defendant in this suit, in a plea of trespass on the case on promises.

The Marine Bank of Chicago, defendant in this suit, puts in its place Messrs. McCagg and Fuller, their attorneys, at the suit of said plaintiffs, in the plea aforesaid.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the second day of August, in the year of our Lord one thousand eight hundred and sixty-one, came said plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, their præcipe, and also their bond for costs, in said entitled cause, which said præcipe and bond are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

U. S. court, next term, A. D. 1861.

3 THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, who sue for use of Thomas J. Porter and Henry Forker, } Dam. $6,000.
vs.
MARINE BANK OF CHICAGO.

The clerk of said court will issue a summons in the above cause, directed to the sheriff of Cook county, in a plea of trespass on the

case on promises, returnable at the next term of said court, A. D. 1861, to the damage of the plaintiff of six thousand dollars.

WAITE & TOWNE,
Plaintiffs' Attorneys.

To W. H. BRADLEY, Esq., *Clerk.*

CHICAGO, *August* 2, 1861.

Endorsed : Filed this second day of August, 1861. Wm. H. Bradley, clerk.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

Circuit court, term, A. D. 185 .

THE PRESIDENT, DIRECTORS, AND COMPANY OF WESTERN RESERVE BANK, use, &c.,
vs.
MARINE BANK OF CHICAGO.

We enter ourselves security for costs in this cause, and
4 promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, hereby agree and stipulate that execution may issue against property for any costs taxed against it. Dated this 2d day of August, A. D. 1861.

WAITE & TOWNE.

Endorsed : Filed Aug. 2d, A. D. 1861. Wm. H. Bradley, clerk.

On the same day, to wit, the second day of August, A. D. 1861, a writ of summons issued out of said clerk's office against said defendant, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit :

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America, to the marshal of the northern district of Illinois, greeting :

We command you that you summon the Marine Bank of Chicago, if it shall be found in your district, to be and appear before
5 our judges of our circuit court of the United States, for the northern district of Illinois, at the October term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto the President, Directors and Company of the Western Reserve Bank, who sue for the use of Thomas J. Porter and Henry Forker, in a plea of trespass on the case upon promises, to their damage, as they allege, of six thousand dollars, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this second day of August, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the 86th year.

[SEAL.]

WM. H. BRADLEY, *Clerk.*

I have this 7th day of August, A. D. 1861, served the within writ by leaving a copy of the same in the hands of J. Young Scammon, president of the within named Marine Bank of Chicago, and he having admitted service thereof.

J. R. JONES,
U. S. Marshal of Nor. Dis't of Illinois.
By GEO. L. WEBB, *Deputy.*

6 Endorsed: Filed Aug. 7th, A. D. 1861. Wm. H. Bradley, clerk.

On this day, to wit, the fifteenth day of August, A. D. 1861, came said plaintiffs by their attorneys, and filed in said clerk's office their declaration against said defendant, which said declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois:

United States circuit court within and for northern district of Illinois, of the October term, A. D. 1861.

STATE OF ILLINOIS,
County of Cook, ss:

The President, Directors and Company of the Western Reserve Bank, a corporation duly incorporated under and by virtue of the laws of the State of Ohio, and doing business in the State of Ohio, who sue for the use of Thomas J. Porter and Henry Forker, and citizen of the State of Ohio, plaintiff in this suit, by Waite & Towne, attorneys, complain of Marine Bank of Chicago, a corporation
7 under and by virtue of the laws of the State of Illinois, doing business in the State of Illinois, and citizen of State of Illinois, defendant in this suit, who summoned, &c., to answer the plaintiff of a plea of trespass on the case on promises.

For that whereas the said defendant, a corporation aforesaid, heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and sixty-one, at Chicago, in said northern district, became and was indebted to the said plaintiff, a corporation aforesaid, in the sum of six thousand dollars, of lawful money of the United States of America, for divers goods, wares, and merchandises by the said plaintiff before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day

and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance
8 and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandises of the said plaintiff, the said defendant, it then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods, wares, and merchandises, at the time of the sale and delivery thereof, were reasonably worth when the said defendant should be thereunto afterwards requested; and the said plaintiff avers that the said goods, wares, and merchandises last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further sum of six thousand dollars, of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year and at the place aforesaid, had notice.

And whereas, also, the said defendant, a corporation aforesaid, afterwards, to wit, on the same day and year and at the place aforesaid, was indebted to the said plaintiffs, a corporation aforesaid, in the further sum of six thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said
9 plaintiff, a corporation as aforesaid, to the said defendant, a corporation aforesaid, and at the like request of the said defendant; and in the like sum for other money by the said plaintiff, a corporation aforesaid, before that time paid, laid out, and expended for the said defendant, a corporation aforesaid, and at the like request of the said defendant; and in the like sum for other money by the said defendant, a corporation aforesaid, before that time had and received to and for the use of the said plaintiffs, a corporation aforesaid; and in the like sum for other money before that time and then due and owing the said plaintiff, a corporation aforesaid, for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendant, a corporation aforesaid, to said plaintiff, a corporation aforesaid; and in the like sum for the price and value of work then done, and material for the same provided by the plaintiff, a corporation aforesaid, for the defendant, a corporation aforesaid, and at the like request of the defendant, a corporation aforesaid. And being so indebted, the said defendant, a corporation aforesaid, in consideration thereof, afterwards, to wit, on the same day and year and at the place
10 aforesaid, undertook and then and there faithfully promised the said plaintiff, a corporation aforesaid, well and truly to pay unto the said plaintiff, a corporation aforesaid, the several sums of money in this count mentioned, when the said defendant, a corporation aforesaid, should be thereunto afterwards requested. And whereas, also, the said defendant, a corporation aforesaid, afterwards,

to wit, on the same day and year and at the place aforesaid, accounted together with the said plaintiff, a corporation aforesaid, of and concerning divers other sums of money before that time due and owing from the said defendant, a corporation aforesaid, to the said plaintiff, a coporation aforesaid, and then and there being in arrear and unpaid, and upon such accounting the said defendant, a corporation aforesaid, then and there was found to be in arrear and indebted to the said plaintiff in the further sum of six thousand dollars, of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff, a corporation, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, a corporation aforesaid, well and
11 truly to pay unto the said plaintiff, a corporation aforesaid, the said sum of money last mentioned, when the said defendant, a corporation aforesaid, should be thereunto afterwards requested: Nevertheless, the said defendants, a corporation aforesaid, (although often requested, &c.,) hath not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant hath hitherto altogether refused, and still do refuse, to the damage of the said plaintiff six thousand dollars; and therefore the said plaintiff bring suit, &c.

WAITE & TOWNE,
Plaintiff's Attorney.

Copy of the account sued on.

The President, Directors and Company of the Marine Bank of Chicago, in ac. with West. Reserve Bank.

1861.			
Feb. 21.	Reno & Little, due Feb. 18		1,143 78
Feb. 21.	J. S. Newhouse, due Feb. 18		384 39
M'ch 7.	G. S. Hubbard, due M'ch 4		1,500 84
Ap'l 21.	J. S. Newhouse, due Ap'l 18		384 39
			3,413 40
1861.	*Credits.*		
M'ch 21.	Check to Porter and Forker	194 34	
Ap'l 16.	Protest, Allen, Vane & Co	2 56	
			196 90
			$3,216 50

12 To Dr.

To money lent and advanced	$6,000
To money paid, laid out and expended	6,000
To money had and received to and for the use of said plaintiff	6,000

To goods, wares, and merchandise sold and delivered	$6,000
To labor and services	6,000
To balance due on account stated	6,000

Endorsed: Filed this 15th day of August, 1861. Wm. H. Bradley, clerk.

On this day, to wit, the tenth day of October, A. D. 1861, came said defendant by its attorneys, and filed in said clerk's office its plea and notice in said entitled cause, which said plea and notice are in the words and figures following, to wit:

U. STATES CIRCUIT COURT,
Northern District of Illinois, ss:

October term, A. D. 1861.

THE PRESIDENT, DIRECTORS & CO. OF THE WESTERN RESERVE BANK, use of Thomas J. Porter *et al.*, *vs.* MARINE BANK OF CHICAGO. } Assumpsit.

And now comes the defendant by McCagg and Fuller, its
13 attorneys, and defends the wrong and injury, when, &c., and says that it did not undertake or promise in manner and form as the said plaintiff has above thereof in its said declaration complained against it. And of this the said defendant puts itself upon the country, &c.

HOYNE, McCAGG & FULLER,
Def't's Att'ys.

Plaintiff does the like, &c.

H. F. WAITE, *Plaintiff's Att'y.*

Endorsed: Filed Oct. 10, 1861. Wm. H. Bradley, cl'k.

CIRCUIT COURT OF THE UNITED STATES,
For the Northern District of Illinois:

Of the October term, A. D. 1861.

THE MARINE BANK OF CHICAGO *ads.* THE WESTERN RESERVE BANK. } Assumpsit.

To WAITE and TOWNE, Pl'ff's Att'ys:

GENTLEMEN: You will please to take notice that we shall insist upon, and give in evidence under the general issue upon the trial of the above entitled cause, that at the said time, when, &c., when said

causes of action accrued, as alleged in the said plaintiff's declaration, the said defendants had been, and were, acting as the
14 bankers of said plaintiffs in Chicago, and as their special agents in that behalf had collected for them, and upon their account, at their special instance and request, a large amount of depreciated and non-specie-paying bank notes, passing current in said northern district of Illinois, as and in lieu of money, to wit: the notes of sundry and divers banks organized and created under and by virtue of the laws of Illinois, commonly known and called "Illinois currency," and had received the same on deposit, or in payment of debts due said plaintiffs, which is the same identical indebtedness or funds claimed in the said plaintiff's declaration to be due them as money had and received by said defendants, and not otherwise; and the said defendants aver that said indebtedness claimed in said plaintiff's declaration arose out of the collection or receipt by said defendants, upon account of said plaintiffs, of a large amount of said depreciated bank notes passing in lieu of money, at the request of and by agreement with said plaintiffs, in payment of sundry demands or accounts remitted for collection to said defendants at Chicago, in said district, or upon deposit, payable to order of said plaintiffs, and which
15 bank notes are the same identical money claimed to be due as money from said defendants to said plaintiffs, and not otherwise. Of all which said plaintiffs had notice.

And the said defendants will also insist upon and give in evidence that the said indebtedness of said defendants, if any there be, arises out of divers and sundry collections made by said defendants at the instance and request of said plaintiffs, and as the agents of said plaintiffs, of large amounts of Illinois bank notes, commonly called "Illinois currency," consisting of the bank notes issued by divers and sundry banks organized and created under and by virtue of the laws of Illinois, and which were passing as and in lieu of money, but at a value greatly depreciated below that of money, or gold and silver coin; that at the time when said notes were received, or funds collected, it had been and was a general custom and usage in Chicago, in said northern district of Illinois, among all banks, bankers, and other persons, to receive and pay out as currency, in payment of all debts and general transactions of business, the notes of all Illinois banks, organized under and by virtue of the laws of Illinois, of and in lieu of money,
16 of which custom and usage the plaintiffs had notice; and that the said defendants, as such bankers and agents of said plaintiffs, had always thence hitherto received in payment of all debts, transactions of business, and collections, the notes of all banks organized under and by virtue of the laws of said State of Illinois, which had been issued or circulated as and in lieu of money, although the defendants aver that it was well known, understood, and agreed by and between the said plaintiffs and defendants that such bank notes, otherwise sometimes called and known as "Illinois currency," was depreciated in value of greatly less value than money—specie, gold or silver coin; and that said paper or bank notes were received as current funds the same as if they were or had been intrinsically worth

the nominal or pretended value expressed upon their face in dollars; and so the defendants will insist that, if liable to said plaintiffs, they are only liable as by their special agreement and undertaking aforesaid, as agents aforesaid, for the true value of the amount of said bank notes or currency, collected or received of or upon account
17 of said plaintiffs, and not the same or nominal amount specified as money claimed to have been had and received of said defendants as aforesaid, in currency as aforesaid, to the use, &c., of said plaintiffs; nor of that amount of money paid or lent to said defendants by said plaintiffs; nor as for that sum of money collected, and which are the same causes of action, and none other specified in said plaintiff's declaration, which defendants will insist upon and are ready to verify, &c.

FULLER & McCAGG.
BECKWITH & HOYNE, *Def't's Att'ys.*

Endorsed: Filed Oct. 10, 1861. Wm. H. Bradley, cl'k.

On this day, to wit, the fourteenth day of November, in the adjourned October term, A. D. 1862, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, who sue for the use of Thomas J. Porter and Henry Forker,
vs.
THE MARINE BANK OF CHICAGO.
} Assumpsit.

18 Now come the parties by their attorneys, and upon issue joined, come a jury of eleven persons, to wit: John Gallbright, E. B. Kingsley, John C. Cockerton, Jacob Portman, D. L. Wood, P. Jacobs, Michael Burns, J. V. Gale, S. W. Swift, David Bloom, and Elias Benner, and by order of the court, by agreement of the parties, by their attorneys, that the trial proceed to the eleven jurors, and that their finding and verdict have the same force and effect as if the cause had been tried to twelve jurors, and they being duly sworn to well and truly try the issue joined, and after hearing a part of the evidence, the hour of adjournment having arrived, the further trial is postponed until to-morrow morning.

On the next day, to wit, the fifteenth day of November, in said October term, A. D. 1862, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, who sue for the use of Thomas J. Porter and Henry Forker,
v.
THE MARINE BANK OF CHICAGO.
} Assumpsit.

19 Now come again the parties by their attorneys, and come also the jury in this behalf empanelled and sworn, and after

hearing the conclusion of the argument of counsel and the instructions of the court, retire to consider of their verdict, with leave by agreement of parties, when they shall have agreed upon a verdict, they sign, seal, and deliver the same to the clerk and disperse.

On the next day, to wit, the sixteenth day of November, in said October term, A. D. 1862, of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, who sue for the use of Thomas J. Porter and Henry Forker,
v.
THE MARINE BANK OF CHICAGO. } Assumpsit.

Now come the parties by their attorneys, and the jury having returned into court their sealed verdict, as follows: We, the jury, find the issue for the plaintiffs, and assess their damages at the sum of three thousand and ninety-two dollars and sixty-six cents, and the defendant by his attorneys move the court to set aside the finding of the jury and grant a new trial.

On this day, to wit, the twelfth day of December, in the adjourned October term, A. D. 1862, of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, for the use of Thomas J. Porter and Henry Forker,
vs.
THE MARINE BANK OF CHICAGO. } Assumpsit.

Now come the parties by their attorneys, and thereupon comes on to be heard the motion of the defendant for a new trial, and after argument of counsel, the court, being fully advised thereon, overrules the same.

On this day, to wit, the fourteenth day of December, in the adjourned October term, A. D. 1861, of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, for the use of Thomas J. Porter and Henry Forker,
v.
THE MARINE BANK OF CHICAGO. } Assumpsit.

Now come the parties by their attorneys, and the court having heretofore overruled the motion for a new trial, it is thereupon considered and adjudged by the court that the plaintiff do have and recover of and from the said defendant the said sum of three thousand and ninety-two dollars and sixty-six cents, the damages found

and assessed by the jury, together with the costs and charges herein, amounting to the sum of thirty-seven dollars and forty-one cents, and that execution issue therefor.

Bill of Exceptions.

22 And afterwards, to wit, on the 14th day of December, A. D. 1861, the said defendant, by its attorneys, come and file their exceptions in the words and figures following, to wit:

IN UNITED STATES CIRCUIT COURT,

Northern Dist. of Illinois:

THE PRESIDENT, DIRECTORS AND COMPANY OF THE WESTERN RESERVE BANK, for the use of Thomas J. Porter, &c., *v.* THE MARINE BANK OF CHICAGO. } Bill of Exceptions.

Be it remembered, that on the trial of this cause the plaintiff then gave in evidence the following letters from the defendant to the plaintiff:

MARINE BANK,
Chicago, Ap'l 19, 1861.

GEO. TAYLOR, Esq., *Warren, O.:* Your account has credit
23 this day as follows:

Respectfully yours,

HAMILTON B. DOX, *Cashier.*

J. S. Newhouse ..... $384 ^{39}.

MARINE BANK,
Chicago, M'ch 4, 1861.

WEST. RES. B'K: Your account has credit this day as follows:

Respectfully yours,

HAMILTON B. DOX, *Cashier.*

Hubbard ..... $1,500 ^{84}, Ex. 7 p. c.

MARINE BANK,
Chicago, Feb. 18, 1861.

WESTERN RESERVE BANK: Your account has credit this day as follows:

Respectfully yours,

HAMILTON B. DOX, *Cashier.*

J. S. Newhouse ..... $384 ^{39}.
Reno & Little ..... $1,143 ^{78}.
Ex. 6 p. c.

24 The plaintiff then called as a witness one E. P. Towne, who testified as follows:

E. P. Towne: I called at the Marine Bank, Aug. 1, 1861, and presented this draft which I now hold in my hand—

$3,216 50. WESTERN RESERVE BANK, OHIO,
Warren, July 18th, 1861.

Without recourse to this bank, pay to the order of Messrs. Porter and Forker three thousand two hundred and sixteen $\frac{50}{100}$ dollars.
GEO. TAYLOR, *Cash'r.*

TO MARINE BANK,
Chicago, Illinois.

$3,216 50. PORTER & FORKER—

for $3,216 50, before presenting the draft or check. I asked the book-keeper what credit there was to the plaintiff. He told me, and the amount corresponded with my draft. I then went to paying teller and demanded of him payment of this draft. He went to the book-keeper to see the amount, and ascertained it was right, and then said I had called there about often enough. I told him I never had called there before on this matter. He said they would give
25 me bills worth 60 cents on the dollar. I told him I would take bills worth 60 cents on the dollar, and endorse on the check that amount. He said I could not have them. I offered to take currency; I offered to take Marine Bank bills, Kane Co. bills, or any bank bills that passed as current in the community. On the 1st August, I had to receive and pay out money. In fore part of July—I was not here after 25th July—I know there was Illinois currency in circulation. I received and paid it out. The difference between exchange and Illinois currency was not over 1 per cent.

Cross-examined.

From 1st July to 25th, I was east; I am one of the attorneys of plaintiff; I can't say how much money I had. It was mostly eastern. I bought some exchange, not over $500; I can't say what money I gave for it, but it was mostly eastern; had seen Kane Co. bills in circulation. Iowa money not much in circulation.

Plaintiff rested.

The def't then read in evidence the following letters from the pl'ff to the defendant:

WESTERN RESERVE BANK,
26 *Warren, Ohio, May 16th*, 1861.

DEAR SIR: Herein please find for credit of this bank, Allen, Vane & Co., on your bank, $100. What rate of exchange will you now charge us for draft on New York for balance due this bank?

Very respectfully,
GEO. TAYLOR, *Cas.*

HAMILTON B. DOX, *Cash'r, Chicago, Illinois.*

WESTERN RESERVE BANK,
Warren, Ohio, April 13, 1861.

DEAR SIR: Your letter of 1st inst. is received, with draft on New York. Please accept my thanks for your prompt attention.

Very respectfully,

GEO. TAYLOR, *Cas.*

SAM'L S. ROGERS, A. *Cash., Chicago, Illinois.*

WESTERN RESERVE BANK,
Warren, Ohio, April 3d, 1861.

27 DEAR SIR: Herein please find for collection, Iddings & Morgan, on Allen, Vane & Co., $250; when paid, send me your draft on New York, less exchange. (No prot.)

Very respectfully,

GEO. TAYLOR, *Cash.*

HAMILTON B. DOX, Esq., *Cash., Chicago, Illinois.*

WESTERN RESERVE BANK,
Warren, Ohio, M'ch 30th, 1861.

DEAR SIR: Herein please find for collection, note of Hale & Ayer, with exchange $180. When paid, please send me your draft on New York.

Very respectfully,

GEO. TAYLOR, *Cash.*

HAMILTON B. DOX, Esq., *Cash., Chicago, Illinois.*

WESTERN RESERVE BANK,
Warren, Ohio, Feb'y 25th, 1861.

DEAR SIR: Your letter of 21st inst. is received; also the package of bank notes, $462 70.

Very respectfully,

GEO. TAYLOR, *Cash.*

SAM'L S. ROGER, A. *Cash., Chicago, Illinois.*

28 WESTERN RESERVE BANK,
Warren, Ohio, Feb'y 19, 1861.

DEAR SIR: The gentlemen for whom I am collecting the note of Thomas Hale, $462 70, due 4 inst., say they can use Illinois money. Will you please send me, by express, $462 in your notes, one and two-dollar bills, none larger than $2? The money will be used in western Pennsylvania.

Very respectfully,

GEO. TAYLOR, *Cas.*

HAMILTON B. DOX, Esq., *Cash'r, Chicago, Illinois.*

WESTERN RESERVE BANK,
Warren, Ohio, Jan'y 24, 1861.

DEAR SIR: Herein please find for collection and our credit—

Reno & Little, note	$1,143	78
J. S. Newhouse, "	384	39
Thos. Hale, "	462	70
J. S. Newhouse, "	384	39
G. S. Hubbard, "	1,500	00

As these notes become due, and are paid, please give notice of payment and credit.

Very respectfully,

29 GEO. TAYLOR, *Cas.*

HAMILTON B. DOX, Esq., *Cash.*, *Chicago, Illinois.*

WESTERN RESERVE BANK,
Warren, Ohio, Dec. 27, 1860.

DEAR SIR: Herein please find for collection—

Porch & Carter, note	$323	53
Reno & Little, "	1,297	65

These notes are payable in dollars, and unless they are paid in funds for which you can remit to me New York exchange at not over 1½ per cent. premium, you will then protest and return the paper to me.

Very respectfully, &c.,

GEO. TAYLOR, *Cash'r.*

CASHIER OF THE MARINE BANK, *Chicago, Illinois.*

This letter and draft was not offered to show payment of any part of pl'ff's claims.

FULLER, *for Def't.*

30 WESTERN RESERVE BANK,
Warren, Jan'y 24, 1861.

Ohio $1,297 $\frac{65}{100}$.

On the 29 inst., in bankable funds, pay to the order of W. M. Tilden, esq., one thousand two hundred ninety-seven $\frac{65}{100}$ dollars.

GEO. TAYLOR, *Cas.*

To HAMILTON B. DOX, Esq., *Cashier, Chicago, Illinois.*
$1,297 65.

W. M. TILDEN.

31 WESTERN RESERVE BANK,
Warren, Ohio, Jan'y 24, 1861.

DEAR SIR: Please receive in payment of the note of Messrs. Reno & Little, due 25–28 inst., $1,297 $\frac{65}{100}$, funds bankable with you, and

place the same to the credit of this bank, and I will draw upon you for the amount in favor of W. M. Tilden, esq.

Very respectfully, &c.,

GEO. TAYLOR, *Cas.*

HAMILTON B. DOX, Esq., *Cash.*, *Chicago, Illinois.*

The defendant then called John Brooks as a witness, who being sworn, testified as follows:

I was discount and note clerk at the Marine during the winter of 1861. I know the def't collected for the pl'ff some notes and drafts during that time. There was collected by def't for p'ff, Feb'y 18, 1861, $384 39 of J. S. Newhouse, $1,143 78 of Reno & Little; March 4, 1861, there was collected by d'ft of Hubbard, $1,500 00 for pl'ff; and April 19, '61, there was collected $384 39 of Newhouse for the p'ff. These collections were paid; the collections of New-
32 house were paid mostly to me in currency, if not all. The collection of Reno & Little was paid in a check on the Western Marine & Fire Insurance Company. The balances between that Co. and def't were always paid in Illinois currency; but I don't know how that check was in fact paid. Hubbard's note was paid to me by charging it against Hubbard's account, which he kept with def't. He was a customer of def't, and kept his account there. The credits to Hubbard were made up of Illinois bank notes. The collection made of Newhouse in April may have been paid in check, but I think it was paid in currency. He did not check on us (the def't) at that time. On February 18, 1861, exchange on New York was worth 6 per cent. in Illinois currency. On Mar. 4, 1861, it was worth 7 per cent., and on April 19, 1861, it was worth 10 per cent. in the same funds. Not much selling at those prices. These collections were made by us in currency, which we received in payment of debts to us, and paid out on our own and other debts. It was used by all persons.

On cross-examination, the witness stated that he could not say what specific bills were paid by Newhouse to him. All money
33 received on collections were mixed with the general funds of the bank and paid out on checks or loaned to customers. All deft's funds were mixed together.

H. B. Dox was then called as a witness by the def't, and being sworn, testified as follows:

I have been a bank cashier for the last ten years. I know the usage and custom of bankers and banks in keeping their funds is to keep them all in common fund. All their funds are kept together, intermingled. It would not be possible to keep them separate, so as to distinguish the funds received for each customer.

On cross-examination, the witness stated that he was cashier of the Hollister Bank of Buffalo. They received current bank bills, gold and silver, and gave the customer credit for them. When payment was demanded, they would give or offer good money in payment. The same thing was done in Milwaukie. They paid in current funds.

They could not pay anything else if they took it at the time it
34 was current; we could not by custom pay them anything else.
That is the custom. The Marine Bank had about $34,000 of its own bills in its vaults at the time.

On re-examination, the witness stated that Illinois bank bills were current bankable funds. There had not been many of Marine Bank bills in circulation—not over four or five thousand dollars of them.

The def't then called L. C. Ellsworth, who being duly sworn, testified as follows:

I have resided in Chicago for the last ten years; my business has been that of teller in a bank. In the winter of 1860-1, currency and bankable funds meant the notes of Illinois and Wisconsin banks. The values of the different bills varied from time to time, from 2 to 40 per cent. These bills ceased to pass current on and after the 18th day of May, 1861. In Nov., 1860, the bills of nine banks in Illinois ceased to pass as currency, and early in April, 1861, 30 more were discredited, and no longer passed current. Principal part of the cir-
35 culation was made up of that kind of bills. Coin did not circulate, except at a premium for this currency. Not many bills of Ohio and Indiana in circulation, but they were at a premium for this currency; but these bills did not pass as currency. The witness was then asked if he had made an estimate of the value of the Illinois currency; to which he replied, that after the 39 banks had been thrown out, or discredited, the value of that which was used as currency until May 18, 1861, when the whole went down, was in the middle and last of July about 75 cents on the dollar; and including the thirty banks that had been thrown out in April, it worth about 71 cents on the $1. This estimate was based upon the quotations of the market value of the stocks deposited as security; lists of the stocks was taken from the auditor's reports. It was of larger value in July than in May or June, owing to the advance in the value of stocks, which was 3 or 5 per cent., and made the bills, or money, worth from 5 to 10 cents on the $1 more.

36 I know the usage and custom of banks and bankers is to keep all their funds together.

On cross-examination, the witness stated that the stockholders of the banks were individually liable for the bills. I did not take this fact into my estimate of the value of the bills, nor the fact of their having been personal assets. Did not estimate the value of the bills separately, but as a whole. I only estimated the value of the stock securities pledged with the auditor. Don't think any of the bills, except those of the Marine Bank, passed at par in July last. I understood that three or four of the banks redeemed their issues in July, 1861, at their own counters, but they were not received at par.

On cross-examination, the witness stated that it was the custom of banks and bankers to mingle all their funds, including depositors' collections and their own money. If we received money on collections, which was afterwards discredited, and checks were drawn for it, we should pay on the check what was current at the time the check was presented.

37 I have no knowledge that there is any custom, that the money so received is at the risk of the party receiving the collection.

On re-direct examination, the witness stated, that so far as my knowledge is concerned, the estimate of value was made wholly on the value of the securities with the auditor.

H. B. Dox was re-called by def't, and testified that the exchange was worth 6 per cent. on the 21st February, 1861, and coin 6½ per cent. premium in Illinois currency. Coin was worth usually from ¼ to ½ of 1 per cent. less than New York exchange. A difference was made by the banks in the credit given their customers, for the different kind of funds received of them. Gold, or coin, was credited as such, and bills of eastern banks as such; while the bills of Illinois and Wisconsin banks were entered without any such description, or if any, it was "currency." A premium was always allowed for gold or coin, and eastern funds, in Illinois currency. The latter was always
38 less than that. It fluctuated in value from time to time, but gradually declined in value until it became so much depreciated, that in May, 1861, it ceased to be used as a circulating medium. Until that time it made up nearly the whole circulation we had. The funds received by the def't for the pl'ff were mixed with the def't's funds, from which it was used indiscriminately in the course of its business.

It was credited to the pl'ff on the books of the def't, as so many dollars. This credit expressed the number of dollars of Illinois currency received by def't for pl'ff, and made a part of the general funds of the def't while it thus remained in its hands.

"Bankable funds" with def't were Illinois and Wisconsin bank bills or currency, which passed current for business purposes at the time the collections were made for pl'ff by the def't.

The def't then called Eugene C. Long as a witness, who being sworn, testified that he was the teller of the def't bank. I know what bills were sent to the pl'ff, as requested in pl'ff's letter to def't of Feb'y 19, 1861. They requested us to send them such Illinois bank notes as were then used as currency with the business
39 community in Chicago.

The foregoing was all the evidence in the cause.

The court then instructed the jury upon the law of the case, and among other instructions instructed the jury substantially as follows:

That generally, a bank or party receiving a note or demand for collection in the absence of instructions, express or implied, had no right to receive anything but good money or gold and silver in payment; but if they believed from the evidence in this case that defendant was authorized expressly or by implication, by the plaintiff, to receive the depreciated currency of Illinois in payment of the notes or bills sent it by plaintiff for collection, and to place the amount to the credit of the plaintiff in the usual way, as stated by Mr. Dox, there to remain until called for by plaintiff, and that defendant did receive such currency in payment of the collections sent it by pl'ff, and mixed it with its own funds as a part of its business and banking

capital, then the defendant is liable to the pl'ff for the value
40 in coin of such currency at the times of payment, with interest from the time of demand by pl'ff for payment, unless the jury believe from the evidence that it was the agreement, express or implied, of the parties that any loss by depreciation of such currency was at the plaintiff's risk, in which case the plaintiff is only entitled to recover the value in coin of such currency at the date of demand for payment, with interest from that date.

To the giving of which instruction the defendant then and there excepted.

The defendant then asked the court to instruct the jury—

That if they believe from the evidence that the defendant was expressly or impliedly authorized by the pl'ff to receive in payment of collections for the pl'ff the depreciated currency of Illinois in use at Chicago, and to place the amount to the credit of the pl'ff in the way and under the circumstances stated by Mr. Dox, to remain until demanded by the pl'ff, then the pl'ff is only entitled to recover of the def't the value in coin of such currency so received by the def't at the time of demand made for payment by pl'ff, with interest from that date.

41 Which instruction the court refused to give, to which refusal of the court the defendant then and there excepted.

The jury rendered a verdict for the pl'ff for the sum of three thousand and ninety-two dollars and sixty-six cents.

The defendant moved for a new trial, because of the alleged errors of the court in giving and refusing the several instructions above written. But the court overruled the motion and rendered judgment on the verdict, to which the def't then and there excepted.

But inasmuch as the said several matters do not appear of record, the defendant prayed that this its bill of exceptions be signed and sealed, which is done.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed Dec. 14, 1861.

WM. H. BRADLEY, *Cl'k.*

42 And on the twenty-third day of December, A. D. 1861, said defendant filed its writ of error in the words and figures following, to wit:

Writ of error.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between the president, directors, and company of the Western Reserve Bank, who sue for the use of Thomas J. Porter and Henry Forker, and against

Marine Bank of Chicago a manifest hath happened, to the great damage of the said Marine Bank of Chicago, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if
43 judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States this nineteenth day of
[L S.] December, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the eighty-sixth year.

WM. H. BRADLEY, *Clk.*

Endorsed: Filed Dec. 23, 1861.

WM. H. BRADLEY, *Clk.*

44 And also, on the said 23d day of December, A. D. 1861, said defendant filed the citation in this behalf in the words and figures following, to wit :

Citation.

United States of America to the president, directors, and company of the Western Reserve Bank, who sue for the use of Thomas J. Porter and Henry Forker, greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December, A. D. 1862, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and northern district of Illinois, wherein the Marine Bank of Chicago is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should
45 not be done to the parties in that behalf.

Witness this twenty-third day of December, in the year of our Lord one thousand eight hundred and sixty-one. (A. D. 1861.)

THOMAS DRUMMOND.

Service of this citation on me by delivering a copy of the same to me, and showing to me this original, is admitted this day to have been made, Dec. 23d, 1861.

WAITE & TOWNE,
Deft's Att'ys.

Endorsed : Filed Dec. 23d, 1861.

WM. H. BRADLEY, *Cl'k.*

And on the 19th day of December, A. D. 1861, the defendant filed his appeal bond herein, in the words and figures following, to wit :

46 *Appeal bond.*

In the United States circuit court, northern district of Illinois.

THE MARINE BANK OF CHICAGO, plaintiff in error,
vs.
THE PRESIDENT, DIRECTORS, AND COMPANY OF THE WESTERN RESERVE BANK, who sue for the use of Thomas J. Porter *et al.*, defendant in error. } In error.

Appeal bond.

Know all men by these presents, that we, the Marine Bank of Chicago, as principal, and J. Young Scammon and J. Young Scammon and Horatio G. Loomis, as sureties, are held and firmly bound unto the above named, the president, directors, and company of the Western Reserve Bank, in the sum of six thousand one hundred and eighty-five dollars and thirty-two cents, to be paid to the said the president, directors, and company of the Western Reserve Bank, use aforesaid, his executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly
47 and severally, and our heirs, executors and administrators, successors and assigns, firmly by these presents. Sealed with our seals and dated this sixteenth day of December, A. D. 1861. Whereas the above-named Marine Bank of Chicago hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the northern district of Illinois, at the October term, A. D. 1861:

Now, therefore, the condition of this obligation is such that if the above-named Marine Bank of Chicago shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

In witness whereof, the said Marine Bank of Chicago by its president and cashier, has hereto set its corporate seal, and the said J.

Young Scammon and Horatio G. Loomis have hereto set their hands and seals the day and year above written.

48 [SEAL.] J. YOUNG SCAMMON, [SEAL.]
President of the Marine Bank of Chicago.
J. YOUNG SCAMMON. [SEAL.]
H. G. LOOMIS. [SEAL.]

Endorsed: Approved.

THOMAS DRUMMOND.

Filed Dec. 19, 1861.

WM. H. BRADLEY, *Clk.*

49 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in the cause wherein the president, directors, and company of the Western Reserve Bank, who sue for the use of Thomas J. Porter and Henry Forker, were plaintiffs, and the Marine Bank of Chicago, defendants, as the same appears from the records of said court now remaining on file in said court.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at office in Chicago, this 28 day of November, A. D. 1862, and of our independence the 87th year.

WM. H. BRADLEY, *Clk.*

50 *Errors assigned.*

THE MARINE BANK OF CHICAGO, p'ff in error,
vs.
THE PRESIDENT, &c., of the WESTERN RESERVE BANK, def'ts in error. } No. 270.

And now comes the said plaintiff and assigns the following errors in the foregoing record and proceedings:

1. That the court erred in giving the instruction for the p'ff below, above set out and excepted to.

2. That the court erred in refusing the instruction asked by the def't below, above set out.

By its attorney,

SAM. W. FULLER.

Dec. 18, 1862.

Filed 6 Dec., 1862.

IN

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1863.

No. 195.

THE MARINE BANK OF CHICAGO,

Plaintiff in Error.

VS.

THE PRESIDENT, DIRECTORS, AND COMPANY, OF THE WESTERN RESERVE BANK, USE OF THOS. J. PORTER AND HENRY FORKER,

Defendant in Error.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

S. W. FULLER, *for Plaintiff in Error.*

THO. HOYNE, *of Counsel.*

CHICAGO:

BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.

BRIEF AND ARGUMENT.

The questions in this case relate to the liability of an agent to his principal. The Marine Bank of Chicago received commercial paper for collection, from the defendant in error, and this action was brought to recover of the plaintiff in error the proceeds of those collections. It is an action of assumpsit; the declaration contains only the common counts, pages 3, 4 and 5 of Record. On page 5 is a statement of the items of the claim. Plea, the general issue, and notice of special matter of defence, pages 6, 7, 8; trial by jury; verdict, and judgment for plaintiff below for $3,092.66, pages 9, 10. Bill of exceptions from pages 10 to 17.

The errors assigned, are, in giving the instruction for plaintiff below, found on pages 16, 17, and refusing the one asked by defendant below, found on page 17.

The instruction given for the plaintiff below, is as follows:

"That generally, a bank or party receiving a note or demand for "collection, in the absence of instructions, express or implied, had "no right to receive anything but good money or gold and silver in "payment; but if they believed, from the evidence in this case, "that defendant was authorized, expressly or by implication, by the "plaintiff, to receive the depreciated currency of Illinois in pay- "ment of the notes or bills sent it by plaintiff for collection, and "to place the amount to the credit of the plaintiff in the usual way, "as stated by Mr. Dox, there to remain until called for by plaintiff, "and that defendant did receive such currency in payment of the "collections sent it by plaintiff, and mixed it with its own funds as "a part of its business and banking capital, then the defendant is

" liable to the plaintiff for the value in coin of such currency at " the times of payment, with interest from the time of demand by " plaintiff for payment, unless the jury believe, from the evidence, " that it was the agreement, express or implied, of the parties, that " any loss by depreciation of such currency was at the plaintiff's " risk, in which case the plaintiff is only entitled to recover the " value in coin of such currency at the date of demand for pay- " ment, with interest from that date."

This instruction is erroneous in this, that it imposes upon the plaintiff in error the consequences of following the instructions of its principal; for, if it was authorized to receive depreciated currency in payment of the paper sent to it for collection, and was authorized to retain it until demanded by the principal, then any loss by subsequent depreciation of that currency, should be borne by the principal, because the loss would be of its property, and from obedience to its instructions. The parties must be supposed to have "intended the necessary consequence of their own " acts," but this instruction required the jury to believe, from the evidence, that there was an agreement between the parties; that the loss by depreciation should be at the principal's risk, or be borne by the agent. It would have required an agreement to put this risk upon the agent, because, the loss following the obedience of its principal's instructions, would naturally and legally seem to be upon the principal, and not upon the agent; while this instruction places all risk of loss upon the agent, unless the jury believed that the parties agreed otherwise.

We admit that, in the absence of instructions, an agent has no authority to receive anything but cash in payment of the demands received by him for collection. But if his principal authorizes him to receive anything else, and he takes what he was authorized to receive, he is in no default, and, so far, is under no liability to his principal for any loss consequent upon that act.

We admit, further, that it is the duty of a collecting agent to remit promptly the proceeds of the collections to the principal; but if the latter directs or authorizes him to retain those proceeds until a particular time, or until called for, he is in no default. He holds his principal's property pursuant to his instructions, and so far, any consequent loss should be borne by the principal.

Now, suppose that after doing this, the principal demands his money or property of the agent, what is the rule of damages, in case the agent refuses to pay or deliver it? We answer, the value of the property at the time of such demand—if it is a chattel, as grain, or a horse; for that is the time of the agent's default; and not its value at the time he received it.

So, if he received and held depreciated currency for his principal, he ought not to be answerable for its value at the time he received it, but at the time he refused to deliver it on his principal's demand.

But the court in this instruction told the jury that, notwithstanding they believed, from the evidence, that the agent had authority to receive the depreciated currency of Illinois in payment of the paper sent to it for collection, and to retain it until called for, the subsequent loss by depreciation of the currency, must be borne by the agent, unless they believed, from the evidence, there was an agreement to the contrary. The jury should have been told, that the risk of loss was upon the principal, unless an agreement to the contrary was shown. The risk was the principal's, so long as its directions were observed; and no law or reason, to be found in or out of a law book, will place it upon the agent until he has departed from the instructions of the principal.

This case differs from the other three before the court only in this—that in all those cases circulars were sent by

the agent to the principals, advising them of the state of the currency and of the money market at Chicago, before receiving their collections, and that collections could only be made in the depreciated currency of Illinois.

In this case it was not shown that any such circulars were sent; but we insist, the facts appearing on the record show an authority to the agent to make collections for the principal, in Illinois currency.

1. The letters of the parties show it.

On the 16th May, 1861, the cashier, Geo. Taylor, of the plaintiff below, wrote to defendant to know what rate of exchange it would charge for draft on New York, for balance due to plaintiff. This was after all the collections sued for had been made. (Page 11 of Record.)

On the 3d April, 1861, he sent another collection to be made and remitted, less exchange. On the 19th February, 1861, he ordered $462.70, amount of collection on Thomas Hale, to be sent him in Illinois bank notes, to be used in Western Pennsylvania. This was done, and the receipt of them acknowledged Feb. 25, 1861. (Page 12 of Record.)

On the 24th Jan., 1861, the collections sued for were sent, with directions, that when they became due, and are paid, the defendant should give notice of payment *and credit.* This was an express authority to retain the proceeds of the collections, and it was obeyed. (See letters from agent, bank, to principal, Feb. 18, March 4, and April 19, 1861, page 10 of Record.)

On the 27th Dec., 1860, Taylor wrote to defendant below, enclosing some collections, saying they were payable in dollars, and unless they could be collected in funds convertible into New York exchange at 1½ per cent. premium, they should be protested and returned; but on the 24th Jan., 1861, when one of these notes fell due, he wrote to defendant below to receive payment of it "in funds bank-

" able with you (the defendant below), and place the same " to credit of plaintiff below." (Page 13 of Record.)

On page 16 of the Record, the witness Dox testified that " bankable funds were the notes of Illinois and Wisconsin " banks which passed current for business purposes."

This shows that the plaintiff below knew that collections at Chicago were not made in cash, and when it desired to have its collections made in cash it gave express directions to that effect, as will be seen in the letter of Dec. 27, page 13.

2. Authority to make these collections in Illinois currency is shown by the testimony of Brooks, page 14; of Dox, 14, 15, 16; of Ellsworth, 15; because that was the usual course of business at that time and place.

" These collections were made by us in currency, which " we receiveed in payment of debts due us, and paid out " on our own and other debts," (Brooks, p. 14) which accords with Dox and Ellsworth's evidence, which follows.

We regard this as sufficient proof of an authority to receive Illinois currency, and the letter of Jan. 24, 1861, from Taylor, is an express direction to credit the proceeds, and not to remit them.

This, we submit, laid a foundation for the first two branches of the instruction, which rendered it, so far, pertinent and proper, but when the court went further, and directed the jury, that although all this might have been rightfully done, yet " any loss by depreciation of such cur- " rency, was at the defendant's risk, unless it was the " agreement otherwise," &c., it placed on the defendant below all the loss which might flow from this manner of transacting the business, although it was done in pursuance of its principal's instructions.

We insist that authority to collect in currency, and to retain that currency until demand, put the risk of loss upon

the principal until a demand of payment was made, which the agent wrongfully refused to comply with, and as that was the time of its first default, (if any) the damages are to be estimated according to the value of the currency at that time.

We will now consider what loss ensued, which must be borne by one or other of the parties.

Brooks testified (p. 14) that when the Reno & Little note was paid in currency, on the 18th February, exchange on New York was worth 6 per cent. in Illinois currency; March 4th it was worth 7 per cent., when Hubbard's note was paid; April 19th it was worth 10 per cent. when Newhouse's note was paid.

Dox testified (p. 16) that this currency fluctuated in value, with a constant downward tendency, until May, 1861, when it became so much depreciated that it ceased to be used as a circulating medium.

Ellsworth stated the same (p. 15). This currency was worth, as he further stated, from 71 to 75 cents on the dollar in July, 1861. From the testimony of these witnesses, it will be seen that the "Illinois currency," or "bankable "funds," in which the defendant below was authorised to make collections for the plaintiff below, declined in value until May 18, 1861, when, it having depreciated so much that it would not circulate as money or currency, "the whole went down," as Ellsworth states, and ceased to be used as a circulating medium, as Dox testified, and in the middle or last of July of that year, was only worth from 71 to 75 cents on the dollar,—a loss on it of from 20 to 25 (?) per cent. after the agent received it for its principal.

The real question was, on whom should this loss fall? The court said, in the instruction under consideration, on the agent unless the parties had otherwise agreed. We insist it should be borne by the principal, unless the

agent had violated some express or implied instruction of the principal.

It had not done so up to the time it collected the demands and credited them to the plaintiff.

Every day after that it held the funds collected for the plaintiff until demand for them was made, it was obeying its instructions. It was bound to have the funds ready to pay on demand; but those funds having ceased to circulate as money, while it held them for the principal, the latter now insists the agent shall pay something instead, which circulated as money at the time of demand although that was worth more than the funds received for the principal were at the time of payment or demand, and the agent might still have had the same funds collected on hand. Suppose the principal ordered the agent to collect its demands in bills of a certain bank; that it had done so, and, pursuant to instructions, had tied them up and kept them until demand for them, and they had depreciated in the meantime, who should bear the loss in that case? There can be but one answer—the principal.

But that is almost the present case; for while an individual, having but one or a few collections to make, may keep the funds of each principal separate from those of all the others, a bank does not and cannot do this. It keeps all its funds in one mass—at least all received and used in the course of its general business.

The business of the agent bank, and of the community in which it was established, was done with a depreciated currency, that fluctuated in value from day to day; and this was known to the plaintiff below. The collections were made in this currrency by its authority, and retained by its directions, and had it called for the proceeds on the day they were receivedi, it would have been entitled to the current value of that currency on that day; had it risen in

value the next day, that increase would have belonged to the principal, and so, we insist, the subsequent loss should be borne by the same party.

The principal was entitled to the value of the currency in coin on the day it was received, said the court below. That is true, if it was demanded that day, or wrongfully withheld or used; but no wrong was done by the retention of it, and so the liability for its value on that day, ought not to furnish the rule of damages for a wrongful withholding of it, on a future day, when its value was different, for until then no breach of duty was committed.

The agent bank was authorized to keep the funds received for its principal in the usual manner, and it did no more than that in putting them among its general funds of the same kind, with which all its own and its customers funds were intermingled.

But it will be insisted that, by so mingling them, and giving the principal bank credit for them, as stated by Mr. Dox, on page 16 of the record, it became the debtor of its principal for the amount of the credit. We admit this is the general rule when business is done with par funds. We do not ask the court, and did not ask the court below to overturn or disregard any well settled rule of law on this subject. All the authorities which may be cited on the other side, to support those general rules, may be allowed their full weight without affecting our points in this case. The law looks at the contract of the parties, and enforces their rights under it, if the terms of their contract are not contrary to law or public policy.

But while all this is true, the circumstances of this case differ widely from those of any reported case.

The legislature of Illinois, by the laws of 1851, (p. 163) 1853, (p. 30) and 1857, (pp. 23 and 220) had established in that State a system of free banking, by which the bills of the

banks established under those laws, were secured by the pledge of public stocks with the Auditor of State. Wisconsin had established a similar system. The issues of these banks made up the currency of those States in the Winter of 1860 1. Unfortunately, the stocks pledged for their security, were chiefly those of the Southern States, and declined rapidly and largely with the advent and progress of their rebellion. The bills of those banks of course declined in value at the same time and to the same extent. It is a matter of public history, of which the court takes notice, that, in the Fall of 1860, the circulation of these banks was over ten millious of dollars, and that, for the reasons named above, this circulation rapidly diminished, in amount and value, until May, 18, 1861, when it finally broke down and went out of use. In the midst of this financial panic occurred all the transactions between these parties.

The whole case shows a mutual knowledge of these facts, and that the business between the parties was done with reference to that state of financial affairs. The court below recognized it so far as to hold that, although credit was given by the agent bank, to its principal, for the number of dollars of Illinois currency, yet it was only liable for the coin value of the currency when received. But why stop there, if no duty had then been violated, and no agreement to pay that sum was shown? The real agreement was, that agent bank would collect this currency, and "credit" it to the principal, and pay it on demand; and, until a demand and refusal, the principal had no right of action against the agent. It is not reasonable to suppose the parties intended the agent bank should guarantee the value of the currency after it was received, to remain the same as at that date; yet this instruction makes it assume that liability, unless the parties agreed to the contrary. The currency fluctuated in value from day to day; the parties

knew it; to convert it into exchange, or rather to remit it to the plaintiff below, involved a loss the principal did not wish to incur, and so it left the currency with its agent until that loss should be less. That time never came; and the court below held, that the value in coin, at the time it was paid to the agent, was the measure of damages, in violation of what we say is proved to have been the contract and understanding of the parties; and if the court can realize the condition of financial affairs at the time of these transactions, it will see many reasons why the rights and liabilities of these parties should be determined by the understanding which they had at the time, and not by rules applicable to a wholly different state of facts; for, as we said in the other cases, if the parties were dealing with money only, and not a depreciated currency, of varying value, they did not need special instructions or agreements, but, having dealt with each other in an unusual manner—first, by making collections in something else than money; secondly, by requiring the collecting bank to hold instead of remit the proceeds of those collections—they must have intended that the natural consequences of this action should fall on the party by whose direction it was had.

The agent bank was authorized to collect in "bankable "funds," or Illinois and Wisconsin bank bills. It did so, as Brooks testified, page 14 of Record. It was thus authorized to take the bills of any bank that were then used as currency, or were "bankable funds." Suppose it had received the bills of any such bank, tied them up, and kept them for the plaintiff below, until called for; and in the meantime that bank had become discredited, while the bills of all other banks remained at their usual value? In the case supposed, the agent, by departing from the usual course of business, in separating these funds from its others, exposed its principal to a certain loss, to the extent of the

depreciation, while, if they had been kept in the usual way, little or no loss might have accrued.

In the case before the court, the funds were kept in the usual way, in one mass, and the value of the whole depreciated, without the fault of the agent.

The parties were dealing in a depreciated currency, of fluctuating value; and, as the agent retained that received for the principal, pursuant to its directions, it was a debtor to the principal for that commodity, payable when demanded, and until demanded, at the owner's (the principal's) risk, if kept in the usual way.

The instruction given for the plaintiff was therefore wrong, in that it fixed a liability upon the agent for loss to the principal, without the fault of the former.

If this is true, it was erroneous to give that instruction for the plaintiff, and also erroneous to refuse that asked by the defendant below, which correctly expresses the principles for which we contend.

"That if they believe, from the evidence, that the defendant was, "expressly or impliedly, authorized by the plaintiff to receive in "payment of collections for the plaintiff, the depreciated currency "of Illinois in use at Chicago, and to place the amount to the credit "of the plaintiff, in the way, and under the circumstances stated "by Mr. Dox, to remain until demanded by the plaintiff, then the "plaintiff is only entitled to recover of the defendant the value in "coin of such currency so received by the defendant at the time "of demand made for payment by plaintiff, with interest from that "date."

Our propositions and authorities are the following:

I.

In the absence of express instructions, "where the agent "has given only the usual credit, or has conducted himself

" according to the usual course of business, and has em-
" ployed the usual diligence in his agency, he will not be
" responsible for any loss occasioned by the subsequent in-
" solvency or fraud of the persons whom he has trusted, or
" to whom he has sold the property, if at the time
" of the sale they were in good credit. So if payment
" is received in the usual manner of conducting the like
" business transactions, as by receiving a check on a bank
" from a person in good credit, who should become insol-
" vent before the check could be duly presented; *or by re-*
" *ceiving the common currency of the country, which should*
" *afterwards become depreciated;* in each of these cases,
" the loss would be the loss of the principal, and not that
" of the agent."

Story on Agency, sec. 202, 413;
1 American Leading Cases, 665 (in notes).
Parsons on Contracts, (68–9) and cases cited in notes.

The agent is bound, first, to follow the instructions of his principal, and in the absence of instructions to conform to the usage and custom, in relation to that kind of business, at that time and place; and in the performance of his duty, the agent is understood to contract for reasonable skill and ordinary dilligence, by which is meant that ordinarily possessed and employed by persons of common capacity engaged in the same business, trade or employment.

Story on Agency, sec. 183.

II.

In collecting the demands for plaintiff below in currency, and crediting them, (viz: retaining them) the agent bank obeyed instructions, and thus is liable to no loss so far as regards that part of the case.

III.

It was justified in mingling the funds collected for its principal, with its own, by the usage of banks and bankers, as shown by the testimony, and as is well known to the court, as a matter of every day business knowledge.

IV.

It was like the case of a confusion of goods by consent, in which case the proprietors have an interest in common, in proportion to their respective shares;

2 Blackstone, 405;

Story on Bailments, sec. 40;

for the intermingling of the plaintiff's funds with those of the agent was the usual mode of keeping them in use, by banks and bankers, and the parties were entitled only to their *pro rata* portion of the entire mass.

Same authorities.

V.

No breach of duty having occurred until a demand was made for the funds by the principal, and a refusal, by the agent, to pay or deliver to its principal the money or property which belonged to it, the rule of damages is the value of the money or property at that date.

2 Greenleaf's Evi., 261;

Douglass vs. *McAllister*, 3 Cranch, 298;

Shepherd vs. *Hampton*, 3 Wheaton, 200.

This is indisputably the rule in case of breach of contracts to deliver chattels.

In the present case the agent was to receive, and keep until called for, "Illinois currency," or "bankable funds,"

for its principal. The breach complained of is, that it refused to pay or deliver these funds on demand, and the only difference between this case, in this particular, and that of *Robinson* vs. *Nobles*, Adm'rs., (8 Peters, 181,) is, that in that case the contract to pay or deliver depreciated paper was express; in the present case it is implied. There is no difference between express and implied contracts, except in the mode of proof.

In that case it was held, that the specie value of the notes, at the time they should have been demanded, was the measure of damages.

8 Peters, 199.

In this case the "currency," or "bankable funds," receceived by the agent for the principal, were to be paid on demand, and their specie value at that time, which was easily ascertained, and proved on the trial, was the rule of damages.

See also, on this point, *Smith* vs. *Dunlap*, 12 Ills., 184, and cases there cited. See further, on this part of the case, the brief filed by us in the case of this plaintiff in error against the Broadway Bank, standing near this case on the docket at the present term.

SAM. W. FULLER,
For Pl'ff in Error.

THOS. HOYNE,
Of Counsel.

Chicago, Jan. 29, 1864.

Chicago "Post" Print.

NO. 195.

SUPREME COURT

OF THE

UNITED STATES.

MARINE BANK, PLAINTIFF IN ERROR,

vs.

PRESIDENT, DIRECTORS, &C., OF THE WESTERN RESERVE BANK.

ARGUMENT FOR THE DEFENDANTS IN ERROR.

The action below was assumpsit brought by the appellee to recover of the appellant certain money which they had collected and *credited* to the appellee. The appellant collected, Feb'y. 21, 1861, of Reno & Littte, $1143.78; Feb'y. 21, 1861, of J. S. Newhouse, $384.39; March 4, of G. S. Hubbard, $1500.80; April 21, of J. S. Newhouse, $384.39; making the sum of

$3413.40, which is reduced by a credit of $196.90, leaving due $3216.50. At the date of the first collection the Marine Bank wrote the appellee "that their account has credit this day as follows: J. S. Newhouse, $384.39"; and upon the making each collection wrote a similar letter. A demand was made upon the appellee for $3216.50, Aug. 1, 1861. The appellant admitted the amount to be correct, and offered to pay bills worth 60 per cent. on the dollar, which did not pass as currency. The appellee offered to take currency which was refused. Offered to take Marine Bank bills, Kane County bills, or any bank bills that passed as currency. At the time of the demand the difference between Indiana and Illinois currency and specie was 1 per cent.

The appellant offered in evidence certain letters from the appellee, (Pages 12 and 13). They then proved by John Brooks that the collections were made in Illinois currency; or by checks on themselves,(the appellant,) payable in Illinois currency. That exchange on New York was, March 4, at 7 per cent., April 19, 10 per cent., Feb'y. 16, 6 per cent. premium. That he could not tell what bills Newhouse paid; but that moneys received on the collections were mixed with the general funds of the banks and paid out on checks or loaned to their customers.

L. C. Ellsworth testified: That in the winter of 1860–1, currency and bankable funds, in Chicago, meant the notes of the Illinois and Wisconsin banks. Their value varied from 2 to 40 per cent. discount. They ceased to pass current on the 18th day of May, 1861. In Nov., 1860, nine banks ceased to pass. Early in April, 30 more were discredited. Coin circulated only at a premium. That he had made an estimate of the value of the bills of the 39 banks last thrown out, and it was an average of about 75 per cent. on a dollar, including the 30 banks thrown out in April, 71 cents on the dollar. This was their actual value in the

middle or last of July, 1861. This estimate was based *solely* upon the quotations of stocks deposited as security. The stockholders of the banks were individually responsible, but he did not take that fact into consideration or any personal assets of the banks in making his estimate. There was a few of the banks which passed current in July and redeemed their bills at their counters. That the custom of the banks was to mingle all their funds together. If they received money on collections which was discredited, when checked for, always paid money current at the time the check was presented.

H. B. Dox, cashier of the appellant, was called by appellant, who testified that there was ¼ to ½ per cent. difference between gold and eastern exchange. Gold and coin was credited as such, Illinois and Wisconsin money was credited as *currency*. That its value fluctuated, till in May, Illinois money ceased to pass as currency; prior to that time it constituted the currency and was bankable funds, and was used in all business purposes. The appellee had credit on the books of the appellant for so many dollars. That all their funds were kept together. This is usual in banks. It would not be possible to keep them separate so as to distinguish the funds of each customer. On cross-examination he said, that he had been cashier at Buffalo, that the custom there, and also at Milwaukee was the same, that when the bank received money current at the time, they gave a party credit for it and always paid in current funds when called for, that they could not pay anything else than money current at the time of the presentation of the check. That the Marine Bank had all the time about $34,000.00 of their own funds in their vault. The plaintiff recovered a verdict for $3092.66, upon which judgment was rendered. *This was the specie value of the money at the times of the collections by the appellant.* The only errors assigned upon the record is upon the instructions given and referred.

The case is simply that of one bank sending to another collections which were made in that which passed as and for currency when the collections matured, and for which they had credit as so many dollars. If any one has reason to complain of error it is the appellee. They were clearly entitled to recover the full amount of the credit.

By their own Cashier and Clerk, it was proved that when they received current bank bills and gave the customer credit, they gave good money; when called for *"they could not pay anything else."* This is not only the understanding of the mercantile world, but the law of the land.

The appellants were either the agent or the debtor of the appellee. Granting them to be the agent, by the mingling of the funds received with their own and using the same, an agent becomes the debtor of the principal.

Robinson vs. Ward, 2 *C & P* 59 (12 Eng. C. L. 450.)
Paley on Agency, 47, 7 *Sim. R.* 178.
In the matter of Stafford, 11 *Barb. R.* 354.
Case vs. Abell, 1 *Paige C. R.* 402.
Story on Agency, *Sec.* 228 *and note* 229.
8 *Ohio State R.* 468.

The rule of law is, that "when a bank makes a collection for a customer, and holds the proceeds which pass into the general funds of the bank, it is not the relation of principal and agent, but that of debtor and creditor, and all risk of the funds is that of the bank.

Commercial Bank of Albany vs. Hughes, 17 *Wend. R.* 100.
Marine Bank vs. Rushmore, 28 *Ill. R.* 463.
Smedes vs. Bank of Utica, 20 *John. R.* 379, 380.
Chapman vs. White, 2 *Seld. R.* 417.

Munn vs. Burch, 25 *Ill. R.* 35.
Matter of Franklin Bank, 1 *Paige C. R.* 249.
Cerhl vs. Bank of Smyrna, 2 *Harr. R.* 235.
May vs. Tuskegee Ins. Co. 34 *Ala. R.* 58.
In matter of Stafford, 11 *Barb. R.* 354.
Edwards on bailments, 66.
Story on bailments, 88.

Indeed, the inducement of a banking business to a great extent is that collections and deposits will not be immediately called for.

Smeedes vs. the Bank of Utica, 20 *John. R.* 379, 380.

And in the case of this very appellant vs. Rushmore, 28 Illinois R. 470, Judge Breese uses this language:

"When the money was collected it was mixed up with the "general funds of the bank. It then became a deposit by the "appellees, and the relation of debtor and creditor arose. It "was a general deposit to their credit, to be governed by the "rules which obtain in ordinary cases of deposits of money with "banking corporations. The doctrine is well established, where "money is deposited in a bank in the ordinary course of busi-"ness it does not raise a contract of bailment. The transaction "amounts to a loan without interest, and creates the relation of "debtor and creditor, the bank receives the money deposited and "undertakes to repay the same on demand at all events. The "funds are mingled with other moneys and become an absolute "debt due from the bank for which it is liable, even though the "money be lost without any fault on its part."

Judge Cowen, in the Commercial Bank of Albany vs. Hughes, 17 Wendell R. 100, uses equally as strong language. And Gardner, Judge in Chapman vs. White, 2 Selden R. 417, says:

"Money deposited generally with a banker becomes the

"property of the depositary, the right of the depositor is *a chose in action.*"

In Robinson vs. Ward, 12 Eng. Com. L. (2 C & P.) 450. An Attorney received £5200 for a client; he deposited it in good faith with his banker, in his own account, with whom he deposited a large amount of his own funds. The next day the bank failed. It was urged that he was not bound to take better care of these funds than of his own; held by Abbot, Judge, that he was liable, and that "if a person having the money mixes it with his own, he thereby makes himself liable, and it is his loss." This case is sustained by the other authorities cited above, and all sustain the instructions of the Judge; see also 11 Barb. R 354.

But it is said in the argument of the appellant, that the course of dealings show that the understanding of the parties was "that the currency was at the risk of the appellee." Now we submit that no such inference is deducable from the proof. How could it be if theappellee had only, as Gardner, Judge, says, *a chose in action?*

The appellant is a bank, doing business five hundred miles away, issuing bills always redeemable at its counter in specie. How should they know the nature of the currency which the Marine Bank "was loaning to its customers and with which it was paying its debts"; and which sprung into existence under its fostering care? for many of which it stood God father, besides its own issue, and with which the business community were dealing as dollars? But they say they knew it was a depreciated currency!

When will there be other than a depreciated currency if large institutions like the Marine Bank will start such Banks receive and pay out over its counter such bills, and use

them for all purposes of business? When have we ever had in Illinois other than a depreciated currency, till the recent issue of government paper?

But we deny that any inference is deducable from the fact that the appellee knew that depreciated currency was passing as and for money.

The collections made in this case were four in number; they called for specie dollars. Courts of law would enforce a call for specie. Does the fact that the appellee was willing to take the usual currency of the country and lend the same to the Marine Bank, on which it was to do business, in any manner affect the case? Does the loan made by the appellee to the appellant create the appellant a bailee for the money? And that is all there is of this case.

Let us look at the correspondence again. "Your account has *credit* as follows: J. S. Newhouse, $384.39"; so were each of the four letters. What is *credit?* It is the relation of debtor and creditor. For what? Dollars. And what is dollars? The answer which is given in both the popular, commercial and legal acceptance, is 100 cents, money. The letter inclosing these collections was dated January 24, 1861, and says, find for "collection and credit," and "please give notice of payment and credit." Again they write: "Please receive in payment of the notes of Reno & Little, funds bankable with you, and place the same *to the credit* of this bank, and we will draw upon you for the amount." Is there any other inference than the creation of *debtor and creditor?* Could the parties have understood any other thing? We are not to ignore our common sense nor our every day experience on such matters, says Judge Caton [in Munn vs. Burch, 25 Ill. R. 38.] "When there is a certain and beaten track upon any subject, which the commercial public habitually

follows, everybody has a right to assume that all similarly situated, or on the way of that road, will persue it." Now the commercial public, nay, our courts, habitually treats such a set of facts as creating the relation of debtor and creditor and nothing else. This is abundantly sustained by the authorities cited above, and by the experience of every individual in the community.

Could the appellee have understood any other thing? And especially when Cowen, Judge, says, in the Commercial Bank vs. Hughes, "that I understand these deposits to create the relation of debtor and creditor. The bank takes the money in the nature of a gratuitous loan, and charges itself with a debt absolutely due the depositor. Should the money be lost without the fault of the bank, it would be liable." "And so does Dox the cashier understand it. He says that they received current funds and gave the customer credit for them. When payment was demanded, they paid in current funds. "They could not pay anything else if they took it at the time it was current." How could it be otherwise when the money received was mingled with the other funds, loaned to customers of the bank, on which they were drawing interest, and on which they record promises to pay dollars? In Robinson vs. Ward, the mere mixing the funds with his own made him *the debtor*, and he bore the loss, and that, too, when the court said "it was a hard case, and all suspicion of the defendant is quite out of the question."

But Mr. Fuller says, they ought not to be liable if they treated the funds as well as their own. That was no answer to the case of Robinson vs. Ward, for the defendant lost his own money at the same time. But it is said by Mr. Fuller that it is the custom of bankers to mix their funds; but he omits to say the same witness says they were bound to pay good funds when

called upon, and the risk was theirs. We have not analyzed the instructions, for the reasons that the appellant cannot complain of any error in their favor. 24 Howard R. 227.

2d. The correctness of the instructions is sustained by the authorities cited by us.

3d. There is no evidence to support the hypothesis upon which they argue the case, and on which they sought instructions.

4th. The verdict is fully sustained by the evidence and the court will never reverse a judgment for error in giving or refusing instructions, if such given or refused instructions would not have changed the result. [23 Ill. R. 502; 18 Ill. R. 453; 1 Scam. R. 491; 3 Scam. R. 17; 1 Gelm R. 490; 4 Wend R. 458; 2 Peters R. 354; 3 Cranch R. 538.

Nor will the rule in trover help the appellant. Their acts would be and are deemed in law a conversion. 1 Humph. R. 199; 16 Vermont R. 138; 6 Sheply 382; 4 Term R. 262; and in such case the damages would be the value of the money at the time of the conversion; 13 Gray R. 313; 2 Mason R. 84; 17 Pick. R. 21; 14 Pick. 356; 8 Pick. R. 90; 1 Mete. R. 172; 8 Bibb R. 175.

Mr. Ellsworth undertakes to give the value of the bills; but in doing so, he simply gives what the stocks would, *on an average*, sell for at the brokers' board.

Is the personal liability of the stockholders nothing? In many States, and with many men, it is considered the safe-guard of the bill-holders. Is it nothing in Illinois? Are the personal assets of the bank not to be considered? The bill holder has these three securities, and yet Mr. Ellsworth ties them to one, and that at the mercy of the bulls and bears of Wall street. But enough of this.

If ever a case was barren of errors it is this. Many times has this appellant and its shadow, the Chicago Marine Insurance Company, for they have been decided to be one,—see 29 Illinois R. 248—asked to have the Supreme Court of the State of Illinois sustain their peculiar views of banking, but they have in every instance refused to do so. See

Marine Bank vs. Rushmore, 28 *Ill. R.* 463.

Marine Bank vs. Chandler, 27 *Ill. R.* 525.

Chicago Marine & Fire Insurance Co. vs. Keiron, 27 *Ill. R.* 506.

Chicago Marine & Fire Insurance Co. vs. Carpenter, 28 *Ill. R.* 360.

Marine Bank of Chicago vs. Birney, 28 *Ill. R.* 90.

And they have been charged upon the principles we have contended for and for one hundred cents on a dollar.

H. F. WAITE,
Atty. for Appellee.

WAITE & TOWNE,
Counsel.

C. Ballance
Atty for Appellee

SUPREME COURT OF THE UNITED STATES.

No. ~~196~~ 83.

THE MARINE BANK OF CHICAGO, PLAINTIFF IN ERROR,

vs.

DUDLEY C. HALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

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WAITE & TOWNE,
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Atty for Appellee